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No. 83-1637

In the Supreme Court of the United States

OCTOBER TERM, 1983

WILLIE L. DRAPER,
Petitioner,

v.

UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL WORKERS OF AMERICA, LOCAL 387, JESSE GREGORY, FORD MOTOR COMPANY, WOODHAVEN STAMPING PLANT, AND FRANK DOYLE,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF FORD MOTOR COMPANY AND FRANK DOYLE IN OPPOSITION

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. DID THE DISTRICT COURT ABUSE ITS DISCRETION IN STAYING DISCOVERY UNTIL AFTER A RULING ON DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT?
2. DID THE DISTRICT COURT ERR IN RULING THAT AS A MATTER OF LAW PLAINTIFF HAD FAILED TO STATE A CLAIM PURSUANT TO 42 U.S.C. §1983, 42 U.S.C. §1985 and 29 U.S.C. §185 FOR WHICH RELIEF COULD BE GRANTED?
3. DID THE DISTRICT COURT ERR IN RULING THAT AS A MATTER OF LAW PLAINTIFF'S CLAIMS UNDER 42 U.S.C. §1983, 42 U.S.C. §1985 and 29 U.S.C. §185 WERE TIME BARRED?
4. DID THE DISTRICT COURT ERR IN RULING THAT AS A MATTER OF LAW PLAINTIFF HAD FAILED TO MEET THE JURISDICTIONAL PREREQUISITE FOR BRINGING A TITLE VII ACTION AGAINST DEFENDANTS FORD MOTOR COMPANY AND FRANK DOYLE?
5. DID THE DISTRICT COURT ERR IN RULING THIS TITLE VII RACE DISCRIMINATION CLAIM WAS BARRED BY LACHES WHERE THE CASE WAS NOT BROUGHT UNTIL OVER EIGHT YEARS AFTER THE FILING OF EEOC CHARGES, THE DEATH AND DISAPPEARANCE OF WITNESSES AND THE DESTRUCTION OF AGENCY FILES OF THE UNDERLYING CHARGE?

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OPINIONS BELOW

The opinion of the Court of Appeals was not recommended for full-text publication. The opinion is set forth in Appendix E to the Petition for Writ of Certiorari. The opinion of the district court granting the motions for summary judgment and dismissing Petitioner's complaint was not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on December 12, 1983. The jurisdiction of this Court is invoked by Petitioner under 28 U.S.C. §1254(1).

STATUTES INVOLVED

The statutory provisions involved are the Civil Rights Act of 1871, 42 U.S.C. §1983 and 1985; Civil Rights Act of 1964, Title VII, 42 U.S.C. §2000e, *et seq.*; Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §401 *et seq.*, 29 U.S.C. §411(a)(4); National Labor Relations Act (NLRA), 29 U.S.C. §185. Although set forth in the Petition as involved in his appeal, Petitioner's complaint made no claims pursuant to the VII and XIV amendments of the United States Constitution and did not raise on appeal to the court below the district court's dismissal of his claims under the Thirteenth Amendment and 42 U.S.C. §1981.

STATEMENT OF THE CASE

Petitioner has been employed by Ford Motor Company since August 31, 1965. On April 12, 1974, Petitioner filed a charge with the Equal Employment Opportunity Commission ("EEOC") and the Michigan Department of Civil Rights ("MDCR") against UAW Local 387 alleging that the union had denied him proper representation in a dispute concerning overtime opportunities and in the treatment accorded him by union representatives, all because of his race. *No charge of discrimination was filed against Respondents Ford Motor Company and Frank Doyle with the EEOC or the MDCR.* The MDCR, after investigation, found no cause to believe that Petitioner had

been discriminated against and on January 18, 1977, dismissed Petitioner's charge. On February 15, 1977, the EEOC received the MDCR's disposition of Petitioner's charge and on February 28, 1977, the EEOC issued a no-cause determination and issued a right to sue letter.

In 1977, Petitioner, together with Operation P.U.S.H. and several other individuals, filed a class action in the Circuit Court for the County of Wayne, Michigan, alleging discrimination under state law. In an amended complaint filed on August 30, 1979, Petitioner and other individuals added claims under Title VII, 42 U.S.C. §2000e, and 42 U.S.C. §1981. That litigation was dismissed without prejudice on August 31, 1979 for lack of prosecution. No appeal was taken from that dismissal nor was the case re-filed.

On January 20, 1982, Petitioner requested and received a second right to sue letter from the EEOC. Petitioner filed the instant action in April of 1982, in the United States District Court, Eastern District of Michigan, Southern Division, alleging violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e; the Civil Rights Act of 1871, 42 U.S.C. §1983; 42 U.S.C. §1985; 42 U.S.C. §1981; Section 301 of the Labor Management Relations Act 29 U.S.C. §185; and violations of the Labor Management Reporting and Disclosure Act ("LMRDA"), 29 U.S.C. §§401, 411, 412 and 530.

A status conference was held on September 28, 1982, wherein the lower court scheduled the dates for pre-trial discovery, final pre-trial order, and final pre-trial conference and additionally allowed Petitioner leave to file an Amended Complaint. On October 8, 1982, Petitioner filed his Amended Complaint. On October 27, 1982, Respondents UAW and Jesse Gregory answered Petitioner's Amended Complaint. On October 29, 1982 Petitioner filed a Subpoena Duces Tecum and Notice of Deposition. On November 4, 1982,

Respondents Ford and Frank Doyle answered Petitioner's Amended Complaint.

On November 29, 1982, Respondents filed a Motion for Protective Order seeking a stay of discovery until Defendants' motions for summary judgment were decided, since on the face of the complaint some or all of Petitioner's claims were legally barred. On December 1, 1982, Petitioner filed his objections to the Respondents' Motion for Protective Order. On December 2, 1982, the lower court granted Respondents' Motion for Protective Order and stayed discovery until December 21, 1982.

On December 6, 1982, Respondents filed their motions for summary judgment and the lower court set oral argument for December 22, 1982. Oral argument was held on December 22, 1982, before the Honorable Ralph B. Guy and an Order was entered on December 27, 1982, granting the Respondents' Motions for Summary Judgment.

Petitioner appealed the Order of Summary Judgment to the United States Court of Appeals for the Sixth Circuit. The Court of Appeals affirmed the district court's judgment on the grounds that:

> . . . there is ample support for the entry of the judgment in their favor even while the Court construes the evidence in a light favorable to this pro se plaintiff. *Bouldis v. U.S. Suzuki Motor Corp.*, 711 F.2d 1319, 1324 (6th Cir. 1983); *Smith v. Pan Am World Airways*, 706 F.2d 771, 773 (6th Cir. 1983) (Per Curiam). The plaintiff's §1983 claim was properly denied because he utterly failed to show that the defendants acted under color of state law. *Coffy v. Multi-County Narcotics Bureau*, 600 F.2d 570, 579 (6th Cir. 1979). His §1985(3) claim of employment discrimination may only be considered under Title VII. *Great American*

Fed. S. & L. Assn. v. Novotny, 442 U.S. 366 (1979). Plaintiff's claims as brought under 29 U.S.C. §185 and 42 U.S.C. §1981 were also dismissed for being time-barred under the applicable statute of limitations. Regardless of whether the six month time limitation contained in the NLRA or the three year time limitations applicable under Michigan state law is applied in this case, the plaintiff's §185 claim is time-barred; and his §1981 claim is absolutely time-barred under the three year statute of limitations which has been held to govern the timeliness of civil rights complaints. *Geromette v. General Motors Corp.*, 609 F.2d 1200, 1201 (6th Cir. 1979). The plaintiff was also required to exhaust his internal union remedies before asserting his claims under the Labor Management Reporting and Disclosure Procedure Act, 29 U.S.C. §401. See 29 U.S.C. §411(a)(4); *Stelling v. IBEW, Local 1547*, 587 F.2d 1379, 1389–1390 (9th Cir. 1978), *cert. denied*, 442 U.S. 944 (1979). Finally, the district court also reasonably and cautiously applied the doctrine of laches to bar plaintiff's Title VII claims in this case. The court properly considered unavailability of witnesses, changed personnel, and loss of pertinent records in its determination that the defendants would suffer undue prejudice if plaintiff were allowed to pursue his Title VII claims. *Abermarle Paper Co. v. Moody*, 422 U.S. 405 (1975); *EEOC v. Dresser Industries, Inc.*, 668 F.2d 1199 (11th Cir. 1982). The court also did not abuse its discretion in restricting plaintiff's discovery until after it could rule on the defendants' summary judgment motions. (Appendix E to the Petition for Writ of Certiorari).

Respondents Ford Motor Company and Frank Doyle were served with Petitioner's petition for writ of certiorari on March 9, 1984, which was rejected by the Clerk, and again on April 4, 1984. This later petition was accepted and docketed.

ARGUMENT

The petition for writ of certiorari should be denied because Petitioner failed to timely file his petition, the petition is defective in content, meets none of the criteria set forth in Supreme Court Rule 17, and does not invoke principles of law of public importance.

1. Petitioner has failed to timely file his petition.

The judgment of the Court of Appeals was entered on December 12, 1983. A petition for writ of certiorari must be filed within ninety (90) days of the judgment of the Court of Appeals. 28 U.S.C. §2101. The court received Petitioner's original petition on March 12, 1984, ninety-one (91) days after entry of the judgment of the Court of Appeals. Under Supreme Court Rule 28 to be timely, a pleading must be *received* by the clerk within the time prescribed for filing. Petitioner did not comply with the requirements of Rule 28 for filing by mail and therefore his petition is not timely.

2. The petition is defective in content and should therefore be denied.

The petition as served on Respondents fails to comply with Supreme Court Rule 21 in the following respects: (a) the questions presented for review are not expressed in the terms and circumstances of the case and include questions not raised in the court below; (2) there is no concise statement of the case containing facts material to the consideration of the questions presented; (3) the argument in favor of allowing the writ is neither direct or concise, nor does it raise any of the reasons or considerations under which this Court would exercise its discretion. Because Petitioner has failed "to present with accuracy, brevity, and clearness whatever is essential to a ready and adequate understanding of the points requiring consideration", the petition should be denied under Supreme Court Rule 21.

3. Certiorari should not be granted to review matters neither raised in nor reviewed by the Court of Appeals.

The following questions presented for review in the Petition were not raised in the district court, were not a basis for Petitioner's appeal, and were consequently not reviewed by the Sixth Circuit.

> . . . was it "constructive contempt" by non-compliance with court's subpeona (sic), what is fair procedure?
>
> Is it "denial" of a meaningful opportunity to be heard to grant motion not in procedural compliance with rules and thereby effecting a substantial right VII Amendment to the United States Constitution?
>
> Was substantial justice rendered where affidavits were made in bad faith, no discovery or cross examination of parties making affidavits and Court asserting good faith of union?

This Court stated that in the absence of exceptional circumstances certiorari is not properly granted to review issues neither raised in nor considered by the court of appeals. *Adickes v. Kress & Co.*, 398 U.S. 144, 147 n. 2 (1970) and cases cited therein. *Cf. Lawn v. United States*, 355 U.S. 339, 362-63, n. 16 (1958). As a result, certiorari should be denied with respect to these questions.

4. Certiorari should not be granted to review cases not involving principles of public importance.

The questions presented in the petition for certiorari, while of substantial significance to petitioner, are not questions of paramount public importance. The Court has stated "that it is very important that we be consistent in not granting the writ

of certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties. . . " *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U.S. 387, 393 (1923) (Taft, C.J.), *quoted in Rice v. Sioux City Mem. Park Cemetery*, 349 U.S. 70, 79 (1955).

The decision of the Sixth Circuit in affirming the district court's dismissal of Petitioner's Complaint, rested on well-established principles of law. To wit: that in order to state a claim under 42 U.S.C. §1983 one must allege and show that the act complained of was taken under color of state law, *Moose Lodge No. 7 v. Irvis*, 407 U.S. 163 (1972); that a §1985(3) claim of employment discrimination may only be considered under Title VII, *Great American Fed. S. & L. Assn. v. Novotny*, 442 U.S. 366 (1979); that claims under §1981 and §1985 are subject to appropriate state statute of limitations, *Johnson v. Railway Express Agency, Inc.*, 421 U.S. 454, 462 (1974); that claims under 29 U.S.C. §185 are governed by the six-month statute of limitations contained in the National Labor Relations Act, *DelCostello v. International Brotherhood of Teamsters*, ____ U.S. ____, 103 S.Ct. 2281 (1983); and that the jurisdictional prerequisite for filing suit under Title VII is the filing of a charge with EEOC, 42 U.S.C. §2000e(5); and that it is within the sound discretion of a trial court to stay discovery until critical preliminary issues, such as challenges to jurisdiction or questions of law regarding defenses, are decided. *See generally*, 8 Wright and Miller, Federal Practices and Procedure, Civil §2040 (1970).

Moreover, there is no conflict of opinion or authority among the courts of appeals requiring resolution by this Court. As a result, certiorari should be denied with respect to all Questions Presented.

CONCLUSION

For the reasons stated, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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